

Expert Focus Group Meeting on Draft ESS6 - October 22, 2014

Draft Summary of Questions and Comments from the Expert Group

(See Annex 1 for List of Participants)

Mark King, supported by colleagues from World Bank, briefly presented the context and history of the ongoing Safeguards update process, including the outcomes of the Phase 1 of public consultations on the Approach Paper. The current (Phase 2) consultations are on the draft Environmental and Social Standards Framework (ESSF), including expert consultation meetings on individual E & S Standards (like this one on ESS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources).

The following summary of comments is organized thematically (with some overlap), not in order they were given.

Consolidated summary of comments and questions from invited experts:

Questions/Comments on the ESSF as a whole:

Information was requested regarding how WB would ensure feedback from different consultations and how WB response to input received will be reported. It was suggested that WB follow the recent example of some other MDBs (e.g. Asian Development Bank) in the course of their similar Safeguards review, where a comments matrix was used to track feedback and show stakeholders how their feedback contributed to the document. Relating to this, a participant indicated that the “comment and response” matrix on the Safeguards Consultation website needs to be improved.

Some participants expressed concern that stakeholders have not had sufficient time to review materials prior to consultation and requested more advanced notice in the future. The need for an extension of the consultation period was discussed.

A concern was expressed that the ESSF is very much oriented to projects, and the need to extend its principles to policy based lending (DPLs, Program for Results).

Participants asked about WB’s plans for addressing the need for portfolio/sectoral capacity development. Suggestions relating to this included support for generating and managing baseline data on biodiversity, ecosystem services, etc. Participants asked about how the “use of country systems” approach will change or continue under the new ESSF. It was suggested that WB consider doing an “accreditation” of countries based on their ability to meet the E&S Standards (e.g. through their own environmental and social management systems).

At the same time, participants expressed the view that strengthening Borrowers’ capacity is very important, it cannot ensure adherence to the Standards and WB should retain responsibility for ensuring

the application of the Standards in operations that it finances (in parallel with Borrowers improving their own legislation and its implementation).

A participant asked for clarification on the definition of a “project” to which the ESSF would apply – i.e., would it only encompass investments directly financed by the WB?

A participant voiced the concern that there could be a “race to the bottom,” as all MFI’s are waiting to see what the World Bank is doing with its SG policies, with the possibility that others would weaken their own policies if they perceive WB has done so. In follow-up, another participant said that the WB should improve and strengthen its policies in a visible and meaningful way – an incremental “below the radar” approach is not sufficient.

A participant asked how the boundaries for ESIA’s are to be defined... will ESIA’s focus only on the direct footprint of a project or go beyond project boundaries?

A participant asked, under the proposed ESSF, would World Bank still need to approve the Environmental and Social Impact Assessments for projects it finances? It was noted that high quality, well-scoped EIAs remain essential for identifying opportunities for avoiding and mitigating adverse impacts.

A participant asked whether Annexes and Guidance Notes to the ESSF would be considered legally binding, along with the main text.

Questions/Comments on ESS6:

General comments

Participants requested clarification on the “tiered approach” to risk management, e.g, the relationship between habitat types and risk ratings. Some commented that the approach is not well described in the draft ESS6, particularly with respect to whether projects with potential to impact on critical habitats would automatically receive more intense scrutiny and face more stringent requirements. Participants asked to see as soon as possible a draft of the Annex on risk rating that is under preparation in order to be able to provide comments. In general, it was noted that there should be significant Safeguards requirements not only for “High Risk” projects but also for “Substantial Risk” projects.

A participant asked for information on the locations and timing of public consultations on the draft ESSF, particularly how many of the consultations are being held in biodiversity “hot spot” countries, as this would be important to ensure.

It was noted that it is difficult to comment on the adequacy of the ESS, when the WB indicates that the specifics (on the application and implementation of the E&S Policy and the Standards) will be provided in Annexes and Guidance Notes that are not yet available. Furthermore, there are some key points –

e.g. the need to avoid causing species extinctions on the global level – that need to be clearly stated in the Standard, not just in associated guidance notes.

The expert group raised concerns given that the proposed standard deals with biodiversity and no other ecological types such as marine, coastal, wetlands, and that these should be included as Annexes that would be mandatory for the Borrower.

A participant provided an oral summary of written comments that had been provided by a global group of biodiversity conservation organizations. Key elements included:

- (i) the scale of application of the ESSF (i.e., proposal that it should also cover WB's non-investment lending);
- (ii) the linkage between biodiversity impacts and project risk assessment;
- (iii) the urgent need to strengthen borrowing countries' capacity for environmental management, including generation and use of data, and that this cannot be created just at the level of individual projects;
- (iv) the need for a stronger, less vague approach particularly with regard to ecosystem services – ESS6 should explicitly recognize ecosystem services and critical habitats;
- (v) WB should avoid/minimize divergence between its policies and standards and those of other Multilateral Financing Institutions including IFC... it is confusing and problematic for Clients to have different approaches and standards. Also, by converging on existing approaches and instruments, WB can make use of lessons learned by others in implementing them;
- (vi) The language in ESS6 must be more clear and strong in emphasizing that avoidance (of adverse impacts on biodiversity) is the first priority, and that offsets are a **last** resort—e.g. suggest further strengthening of language in Para 15 ... suggestion is to state that avoidance of adverse impacts is the first principle...;

The written version of these collected/consolidated comments from global biodiversity conservation groups was provided to the WB. It includes further details on these and other issues, as well as specific recommendations for improving the document.

Comments on Mitigation Hierarchy, Offsets, etc.

Participants suggested revising/strengthening Para 15 to further clarify that avoidance is the first principle, and offsets should be considered a last resort. It was felt that the current language is too much focused on the offset option (e.g., should not mention offsets in the first sentence).

It was noted that biodiversity offsets can be an important conservation tool, particularly given the limited resources available or biodiversity conservation, but must be used very carefully. For example, *ad hoc* offsets are generally not credible, and it is important to determine in advance what are the real opportunities to create offsets in a given country. (A consensus document from the group, titled “A

Mitigation Hierarchy that includes biodiversity offsets: common points in support of their responsible application” was sent to the WB previously but does not seem to have been considered in the current draft¹). Several participants expressed concern that the current draft gives the impression that there are no limits to the possibility of using offsets as a mitigation measure. Specifically, ESS6 should ensure the protection of key/unique places – explicitly stating that some sites and situations/impacts are not “off-settable” (e.g. the “Alliance for Zero Extinction” sites) . A comparison was made to the WWF policy which allows offsets but under very restrictive conditions. (“No-go” areas are actually “no destructive activities” areas).

Some participants said that while ESS6 would not be expected to identify specific “no-go” areas, it could say that Borrowers should identify such areas which are to be off limits to development (reference to the “avoidance” option which is the key preferred option in the Mitigation Hierarchy. These areas would need to be viable ecological areas (not very small set-asides). Some other participants suggested consideration of putting certain types of areas (e.g. AZE sites) on an “exclusion list” included in the ESSF.

Related to this, it was noted that the terms “rare” and “unique” (ecosystems) do not appear in ESS6.

ESS6 needs an “up front filter” to identify such sites and situations, not rely only on the EIA, which is often prepared after important decisions such as project siting have been made. It was noted for example that IFC’s PS6 specifically mentions AZE sites (etc.) to be looked at formally in advance – ESS6 should do the same.

The WB team was urged to consider adopting language from the “Business and Biodiversity Offsets Programme” (BBOP) principles and criteria for “non-offsettable” sites and situations (relating to irreplaceability, client capacity, nature and scale of projects and impacts, resources available to implement and sustain offsets, likelihood of implementation, etc.)². It was noted that including criteria on client capacity, in particular, would go beyond what is currently in IFC’s PS6.

Further clarity is also needed regarding performance requirements for offsets (i.e., in some places the draft says offsets must be in place “while project impacts last.”

Tools such as IBAT should be used for “constraints mapping,” e.g., identifying no-go areas or areas of particularly high risk.

Comments on definitions, including classification of habitats

There was concern that the proposed ESS6 language for sensitive habitats only makes reference to the importance of environmental values does not mention natural habitats or ecosystem services. “Critical Habitat” as defined in the draft ESS6 focuses on species diversity to the exclusion of other important values (ecosystem service provision, livelihoods, cultural values...). Overall, the draft language was

¹ As it was submitted separately rather than being distributed at the meeting, this document will be uploaded separately to the Safeguard consultations website

² See Annex 2 of this summary

seen as a weakening of the existing policy, and the recommendation was for WB to adopt the IFC (PS6) definitions.

As the draft ESS6 does not provide standards for protection and management of ecosystem types (e.g. marine, coastal, wetlands), these should be included as Annexes that are mandatory for the Borrower.

It was further noted that the absence of such Annexes at this stage of the consultation makes it difficult to provide input on many important aspects, so there should be further stakeholder consultation on the Annexes.

Comparisons of ESS6 and IFC PS6

In general, most participants expressed the view that while PS6 is not perfect and could be improved, it (including its classification of habitats) should be used as the basis for ESS6, with specific improvements introduced as appropriate. There are numerous downsides to WB taking a “divergent” approach (different from most development partners).

In general participants felt that introducing the concept of “Priority Biodiversity Features” resulted in a weakening of biodiversity protection and therefore inconsistent with WB’s commitment not to do so. The group’s agreed recommendation is that the WB adopt the PS6 definitions of modified/natural/critical habitats in place of the currently proposed language describing “sensitive habitats” and “priority biodiversity features.” (The term “priority biodiversity features” could be used in a Guidance Note on the scoping phase for EIA).

Participants indicated that overall the differences between the draft ESS6 and PS6 make ESS6 a weaker document *vis a vis* biodiversity protection, although there are a few cases where the draft ESS6 is stronger. Some specific comparisons provided as examples (participants will provide additional examples and comments in writing):

- “avoiding measurable adverse impacts (PS6) seems stronger language than avoiding “significant conversion” (ESS6);
- Para 20 of ESS6 stronger than Para 17 of PS6 *vis a vis* potential to affect critical habitats beyond the project footprint
- Para 17 (c) of ESS6 (“...not impair [habitat’s] ability to function...”) is less precise than Para 17 of PS6 (“...not lead to measurable adverse impacts on those biodiversity values for which the critical habitat was designated...”)
- some important points included in Para 17 of PS6 are only in the footnotes in ESS6.

There was general consensus that there are considerable benefits to harmonizing with PS6, which has been fairly well tested and found to be useful and practical, and that WB should avoid introducing new terminology.

Comments on Ecosystem Services

Several participants contributed to a discussion of whether ESS6 should include provisions relating to avoiding negative impacts on ecosystem services (ES). One participant summarized IFC experience with implementing PS6 provisions on “priority ES,” indicating it has been challenging. As ES are defined anthropocentrically (i.e., what the landscapes provide to people), impacts on ES really fall more within social/economic impacts than within biodiversity in the strict sense. For defining or identifying critical habitats one can generally go to authoritative sources backed up by data, while for ES it must be stakeholders who define what are the priorities from their perspective. This calls for effective integration of environmental and social specialists and strong stakeholder engagement. One of the main challenges is a general lack of baseline data on ES, with the result that most analysis has been qualitative rather than quantitative. If WB decides to include provisions regarding ES in ESS6, the term will have to be defined clearly both in principle (at the policy level) and in practice (in the context of a given project).

While there was not a clear consensus, in general the group indicated that the absence of ES in the current draft is a gap that should be addressed in the ESSF in some way, even if not in ESS6 (e.g., in Para 26 of the ESS1 which discusses the scoping of issues for the Environmental and Social Assessment). It was noted that the Biodiversity Roadmap has good language on the linkage between biodiversity and ES.

Comments relating to Climate Change

ESS6 should recognize the importance of natural habitats and the ecological/ecosystem services they provide in relation to climate change mitigation. One specific proposal is to do this in the context of carrying out climate risk assessments for proposed operations and investments. It was noted that all the Multilateral Development Banks (including WB, in a recent public presentation by Rachel Kite) have committed to using climate change screening tools, and participants asked about the relationship between this commitment and the ESSF.

Climate change issues should be addressed very early in project development (design stage) and considered over the lifecycle of the project.

Comments and questions on application, implementation aspects

From a practical perspective, a participant requested clarification on the timeline for preparation of key documents (ESIA, Biodiversity Action Plan, etc.) during project preparation and implementation.

There should be a Guidance Note on Terms of Reference for preparation of ESIA's, including the need for TORs to be very specific rather than generic.

Detailed guidance will also need to be provided regarding offsets (when, where, how, under what conditions, with what assurances...)

Similarly, as the use of Biodiversity Action Plans represents a new element in the WB's policy, participants recommended that ESS6 include specific guidance on the associated procedures and contents of these documents. There is also a need for clarity as to the degree of Bank-support for development and implementation of BAPs.

The ESS should include specific requirements regarding ensuring adequate and sustained financing for any mitigation measures (including, not limited to offsets)

Other comments

A participant asked why there is a special reference to plantations/natural forests (footnote 3) but not to other specific types of ecosystems. Another noted that there is important language in the current Forests Policy that must be captured/retained in the new ESSF (which will no longer have a separate Standard on forests).

ESS6 should provide more focus and guidance on planning at the landscape level.

Related to this, a participant cited the case of hydropower investments, which present a particular challenge for the mitigation hierarchy, and suggested that ESS6 include specific text calling for an integrated river basin planning and management approach.

The above intervention led to a wider discussion on the merits and disadvantages of going into specific sectoral issues in the ESS. The general feeling was that sectoral specifics would be better addressed in guidance notes, both because addressing individual sectors in the ESS would make it unwieldy as a policy document, and because guidance notes can more easily be kept up to date.

Summary of specific recommendations on text from participants (expanded and to be followed up and expanded in written comments already provided or to be provided by some participants):

ESS6 should use PS6 definitions/classification of habitats – critical, modified and natural

With reference to ecosystem processes: modify Para 17(c) to reflect PS6 Para 17(2)

Drop para 10 (redundant with Para 17, but less stringent)

Ensure internal consistency in terminology -- e.g., see Paras 10, 16 and 17

Para 7: keep first part; eliminate second part

Para 15: Mention avoidance first, stressing it is the first principle (e.g., see Para 7 of PS6); then bring in rest of mitigation hierarchy, with offsets clearly indicated as last choice/last resort

It was noted that any significant/substantive changes to the existing OP 4.04 (and/or PS6) should be documented so they can get due consideration. E.g., expansions discussed during the meeting:

- Expanding critical habitat requirements to situations where projects are located near to CH, not only within CH (would be an expansion of language in PS6);
- Addition of references to no-go situations for offsets, using BBOP criteria (including client capacity)
- Language on habitats/sites that are significant (critical?) in relation to climate change adaptation

List of Participants

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Proposed language on offsets, based on BBOP principles

“Some negative impacts on biodiversity cannot be offset; where biodiversity is highly specialized, uniquely adapted to one or few locations, slow to regenerate, relatively immobile, highly threatened and/or irreplaceable. Biodiversity offsets should not be used in cases where unique or irreplaceable values are at risk. Biodiversity offsets are not appropriate where there is little confidence that offsets can be successfully implemented. Adequate financial support must be ensured for monitoring and managing biodiversity offsets and should last as long as the residual impacts of a project.”